

REMARKS

Claims 3, 5, and 23 were pending in the present application. Claims 24-28 have been withdrawn, without prejudice, and claims 3 and 5 have been amended. Applicants have added new claims 29-34.

§ 102

The Office Action rejected claims 3, 5, and 23 under 35 U.S.C. § 102(b) based on Armeniades et al., U.S. Patent Nos. 4,548,205 and 4,841,984 (collectively “Armeniades”).

Applicants have amended claim 3 to recite the following specific aspect of the present design: introducing irrigation fluid via a positive displacement pump.

The Armeniades references only discuss the irrigation pumping employed in a limited manner. For example, Armeniades ‘205 merely states “The handpiece can be connected through a flexible plastic tube (not shown) either to a saline solution reservoir for irrigation (not shown) or a pumping system for aspiration (not shown)” Armeniades ‘205, Col. 4, ll.33-37. Thus Armeniades solely provides a saline solution reservoir, relying on gravity to deliver irrigation fluid, as opposed to a pump such as a positive displacement pump as presently claimed. No discussion whatsoever of a positive displacement pump for irrigation is provided in the Armeniades references.

The present design, in contrast, specifically recites the use of a positive displacement throughout the specification, including the recitation of positive displacement pump performance characteristics at paragraph at p. 7, ll. 13-20:

By utilizing the pump 16 which preferably is a positive displacement pump in combination with the pressure sensor 20, a “closed” pressure measurement system is provided which enables the precise control of infusion pressure into the eye without relying on the height of a traditional irrigation fluid source (not shown).

Preferably a bi-directional positive displacement pump 16 facilitates precise control of the fluid pressure.

(emphasis added)

Use of the positive displacement pump, as opposed to the traditional irrigation fluid source, adjusted by changing the height of the fluid source, provides “precise control of infusion pressure into the eye.” Armeniades relies on the method characterized by the present specification as “traditional,” and does not include a positive displacement pump for irrigation as presently claimed in independent claim 3, as amended, or the other independent claims.

Independent claim 3 and new independent claims 29 and 32 include the positive displacement pump limitation and thus for the reasons presented all independent claims, as amended, are not anticipated by the Armeniades references. Claims depending from allowable claims 3, 29, and 32 are also allowable as they include limitations not shown in the cited references.

Applicants therefore submit that all claims, as amended, are not anticipated by the cited references.

Double Patenting

The Office Action rejected claims 3 and 5 under the judicially created doctrine of obviousness-type double patenting based on claims 2 and 5 of U.S. Patent 7,018,355 to Kadziauskas et al. Claims 3, 5, and 23 were rejected under the judicially created doctrine of obviousness-type double patenting based on claims 1, 3, and 8 of U.S. Patent 6,899,694 to Kadziauskas et al. Claims 3, 5, and 23 were rejected under the judicially created doctrine of obviousness-type double patenting based on claims 1-6 of U.S. Patent 7,001,356 to Kadziauskas et al.

Applicants file herewith a terminal disclaimer in compliance with 37 C.F.R. §1.321 to overcome the nonstatutory double patenting rejections. Applicants respectfully submit that this terminal disclaimer overcomes these grounds for rejection.

CONCLUSION

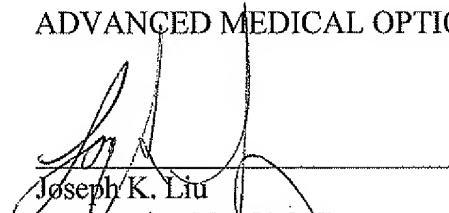
In view of the foregoing, it is respectfully submitted that all claims of the present application are in condition for allowance. Reexamination and reconsideration of all of the claims, as amended, are respectfully requested and allowance of all the claims at an early date is solicited.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants believe that no fees are due in accordance with this Response. Should any fees be due, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account 502317.

Respectively submitted,
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